

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gil's Trucking Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Franchise Tax under Article 9, Section 183 of :
the Tax Law for the Years Ended December 31, 1967 :
through December 31, 1976. :
_____ :

State of New York }

ss.:

County of Albany. }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Gil's Trucking Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gil's Trucking Corp.
Att: Gilbert Fogel, President
59-55 47th Avenue
Woodside, NY 11377

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of January, 1984.

David Parchuck

William A. Hagel Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Gil's Trucking Corp. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or for Refund :
of Franchise Tax under Article 9, Section 183 of :
the Tax Law for the Years Ended December 31, 1967 :
through December 31, 1976. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Irwin Siegel, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irwin Siegel
11 Lesley Dr.
Syosset, NY 11791

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 18, 1984

Gil's Trucking Corp.
Att: Gilbert Fogel, President
59-55 47th Avenue
Woodside, NY 11377

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irwin Siegel
11 Lesley Dr.
Syosset, NY 11791
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GIL'S TRUCKING CORP.
for Redetermination of a Deficiency or for
Refund of Franchise Tax under Article 9,
Section 183 of the Tax Law for the Years Ended
December 31, 1967 through December 31, 1976.

DECISION

Petitioner, Gil's Trucking Corp., Attention: Gilbert Fogel, President, 59-55 47th Avenue, Woodside, New York 11377, filed a petition for redetermination of a deficiency or for refund of franchise tax under Article 9, section 183 of the Tax Law for the years ended December 31, 1967 through December 31, 1976 (File Nos. 32021 and 32493).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1983 at 1:15 P.M., with all documents to be submitted by May 26, 1983. Petitioner appeared by Irwin Siegel, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the Audit Division's estimate of franchise tax asserted as due and owing by petitioner for the years ended December 31, 1967 through December 31, 1976 should be sustained.

FINDINGS OF FACT

1. On July 30, 1980, as specified below, the Audit Division issued notices of deficiency to petitioner, Gil's Trucking Corp., asserting tax due

under Article 9, section 183 of the Tax Law, plus interest, for the years ended December 31, 1967 through December 31, 1976, as follows:

| <u>Year Ended</u> | <u>Notice Number</u> | <u>Date Issued</u> | <u>Deficiency Asserted</u> | <u>Interest Accrued (Date of Issuance)</u> | <u>Total Asserted</u> |
|-----------------------|--------------------------|------------------------|--------------------------------|--|---------------------------|
| 12/31/67 | C800620466N | 7/30/80 | \$250.00 | \$186.58 | \$436.58 |
| 12/31/68 | C800620467N | 7/30/80 | 250.00 | 171.58 | 421.58 |
| 12/31/69 | C800620468N | 7/30/80 | 250.00 | 156.58 | 406.58 |
| 12/31/70 | C800620469N | 7/30/80 | 250.00 | 142.43 | 392.43 |
| 12/31/71 | C800620470N | 7/30/80 | 250.00 | 126.58 | 376.58 |
| 12/31/72 | C800620471N | 7/30/80 | 250.00 | 139.46 | 389.46 |
| 12/31/73 | C800620472N | 7/30/80 | 250.00 | 120.71 | 370.70 |
| 12/31/74 | C800620473N | 7/30/80 | 250.00 | 115.55 | 365.55 |
| 12/31/75 | C800620474N | 7/30/80 | 250.00 | 94.30 | 344.30 |
| (12/31/76 | C800620465N | 7/30/80 | 250.00 | 202.43 | 452.43)* |

2. Separate statements of audit adjustment, each dated June 20, 1980 and attached to the above notices of deficiency, had been issued to petitioner explaining the above-noted deficiencies were estimated due to "...failure to answer our letter".

3. On November 17, 1980, the Audit Division issued a Notice of Deficiency, numbered C801117952N, to petitioner asserting tax due in the amount of \$250.00, plus accrued interest (to the date of issuance) of \$205.65, for a total asserted of \$455.65. This Notice was stated, on its face, to be for the "period begun 1/1/67". A Statement of Audit Adjustment, also dated November 17, 1980 was attached to this notice and provided, in explanation of the notice, as follows:

"[E]stimated deficiency for failure to answer our letter. Our previous assessment, #C800620465N has been cancelled due to an internal problem. You will have to file a separate petition for this one period, 12/31/66 (1/1/67).".

4. Timely petitions contesting each of the notices issued were filed on behalf of petitioner. It is clear from the petition filed with regard to

* Deficiency C800620465N was subsequently cancelled by the Audit Division (see Finding of Fact "3").

Notice number C801117952N and from the Statement of Audit Changes issued with and attached to this Notice (see Finding of Fact "3") that it pertains to the year ended December 31, 1966.

5. Petitioner was, during the period at issue, a one-man, one-truck, trucking business operated by its sole officer, Gilbert Fogel. In or about December, 1977, petitioner's representative, Mr. Irwin Siegel, became aware that petitioner may not have been, as he believed, a dormant corporation during the years at issue, but rather had been actively engaged in business. It was asserted that during those years, Mr. Fogel had reported the income generated by petitioner on his personal income tax returns.

6. Accordingly, upon learning of petitioner's activity during the years at issue, Forms CT-40 (New York State Report of Transportation and Transmission Corporations and Associations Franchise Tax on Capital Stock) for the years 1966 through 1975 were submitted on behalf of petitioner by its representative. These Forms CT-40 were all dated December 21, 1977, were signed by Mr. Fogel, and reflected, on their faces, \$100.00 as the value of petitioner's capital stock, a minimum tax (at line 7) of \$75.00, and amounts of interest and penalties accrued on the minimum tax from the due dates of the respective reports. No other information with regard to petitioner's activities or income, nor any calculations or computations in respect thereof were included on or attached to these reports. Accompanying these reports was a check in the amount of \$1,124.86, representing the total of the minimum tax and accrued interest shown on the Forms CT-40 as submitted (but with no remittance for penalties shown thereon), together with a request by Mr. Siegel that penalties not be imposed "...as the failure to file was not the fault of the taxpayer".

7. By a letter to petitioner dated January 10, 1979, the Audit Division acknowledged receipt of the above CT-40's and requested that petitioner furnish all pages of its Federal tax returns for the years at issue, as well as filled-in schedules for the Forms CT-40. A similar letter requesting this information was issued to petitioner on May 1, 1979.

8. By a letter dated October 17, 1979, the Audit Division advised petitioner that due to its failure to respond to the above letters requesting information, assessment of tax would be made unless petitioner responded within 30 days. By a letter dated October 30, 1979, petitioner's representative responded to the Audit Division's letters stating, "...to the best of my knowledge (petitioner) is a non operating dorment (sic) company. There are no assets or liabilities and the minimum franchise tax is being paid to keep the corporate name alive."

9. By a letter dated December 24, 1979, the Audit Division responded to petitioner's October 30, 1979 letter, stating, "[b]ased on returns received under Section 184, the corporation has been receiving at least \$20,000 in receipts each year.". This letter again requested copies of all pages of petitioner's Federal returns for the periods ended 1966 through 1975.

10. The estimated deficiencies herein were issued on the basis of petitioner's failure to respond to the foregoing letters and furnish the information (Federal returns and filled-in schedules to the Forms CT-40) requested. Petitioner asserts it did not receive credit for its prior payment (on December 21, 1977) of \$1,124.86. The Audit Division acknowledges payment of this amount, and asserts the instant deficiencies were prepared and issued after such payment was received and represent amounts asserted over and above the \$75.00 minimum tax amount paid by the petitioner. At the hearing, petitioner indicated completed (reconstructed) tax reports (Forms CT-40) from its records

for the periods at issue would be submitted to the Hearing Officer by May 26, 1983. No such tax reports were furnished. Finally, tax and interest only, without penalties, is asserted as due per the notices of deficiency.

CONCLUSIONS OF LAW


A. That petitioner has failed to show that during the years at issue it was a dormant corporation. To the contrary, the evidence indicates petitioner was actively engaged in the trucking business during such years. Furthermore, petitioner has submitted no Federal returns, completed schedules for Forms CT-40, records or other evidence of its receipts during the years at issue, from which its tax liability under section 183 of Article 9 of the Tax Law could be determined. Accordingly, in view of such failure to provide information, the Audit Division's estimate of petitioner's tax liability must be sustained.

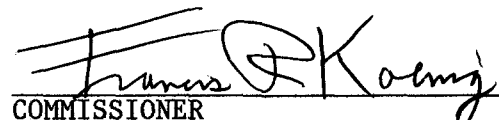
B. That the petition of Gil's Trucking Corp. is hereby denied and the notices of deficiency dated July 30, 1980 and November 17, 1980, together with such interest as may be lawfully owing, are sustained.



DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

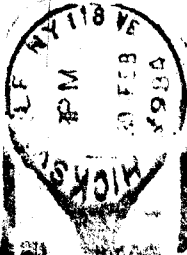

PRESIDENT


COMMISSIONER

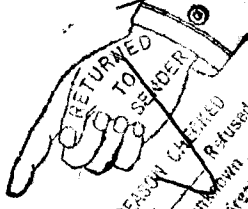
 
COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

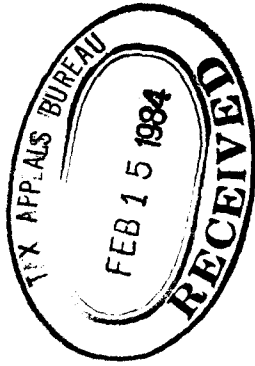


COLLECT
USA
STAMPS



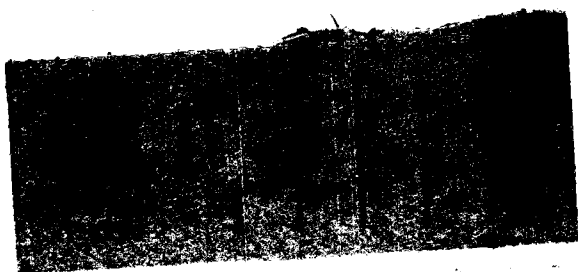
PERSON CLAIMED
Unclaimed
Addressee unknown
Insufficient address
No such street
No such office in state
Do not remove in this case

Irwin Siegel
11 Lesley Dr.
Syosset, NY 11791



CERTIFIED
P 440 976 689

MAIL



REQUEST FOR BETTER ADDRESS

| | | |
|---|---|--------------------------------|
| Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Date of Request 2/15/84 |
|---|---|--------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

| | |
|---|---------------------------------------|
| Social Security Number | Date of Petition H. - Dec. 1/18/84 |
| Name Irwin Siegel | JTP Inc Trucking Corp |
| Address 11 Lesley Dr. Syosset, N.Y. 11791 | |

Results of search by Files

| | | |
|---|------------------------|---------------------------|
| <input type="checkbox"/> New address: | | |
| <input type="checkbox"/> Same as above, no better address | | |
| <input checked="" type="checkbox"/> Other: | Unclaimed Rep. Copy | |
| Searched by D.C. | Section | Date of Search 2/16/84 |

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 18, 1984

Gil's Trucking Corp.
Att: Gilbert Fogel, President
59-55 47th Avenue
Woodside, NY 11377

Gentlemen:

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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Irwin Siegel
11 Lesley Dr.
Syosset, NY 11791
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
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GIL'S TRUCKING CORP.
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* Deficiency C800620465N was subsequently cancelled by the Audit Division (see Finding of Fact "3").

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CONCLUSIONS OF LAW

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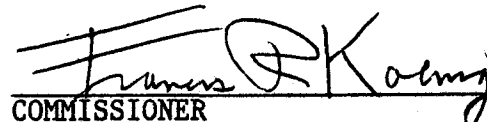
B. That the petition of Gil's Trucking Corp. is hereby denied and the notices of deficiency dated July 30, 1980 and November 17, 1980, together with such interest as may be lawfully owing, are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER